



June 23, 1999

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR99-1740

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125708.

The City of Corpus Christi (the "city") received a request for a "civil service board letter concerning disciplinary action" against a named individual. You ask whether the requested information is protected from disclosure by section 552.101 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by judicial decision, including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Section 552.101 also embraces constitutional privacy. *See Industrial Found.*, 540 S.W.2d at 678. The constitutional right to privacy consists of two related interests: 1) the individual interest in independence in making certain kinds of important decisions, and 2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional "zones of privacy" described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976). These "zones" include matters related to marriage, procreation, contraception, family relationships, and child rearing and education.

The second interest, in nondisclosure or confidentiality, may be somewhat broader than the first. Unlike the test for common-law privacy, the test for constitutional privacy involves a *balancing* of the individual's privacy interests against the public's need to know information of public concern. Although such a test might appear more protective of privacy interests

than the common-law test, the scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)).

In our opinion, the information at issue is not protected by common-law privacy because the information relates to the conduct of the individual named in the request while he was "on city time." The public has a legitimate interest in such kinds of information. Nor is the information protected by constitutional privacy under the standards established by the courts. *See e.g.* Open Records Decision Nos. 455 (1987), 444 (1986). Therefore you must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 125708

Encl. Submitted documents

cc: Ms. Adelita Salinas
3242 Brawner Parkway
Corpus Christi, Texas 78411
(w/o enclosures)